

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS
(Boston Division)

UNITED STATES SECURITIES AND
EXCHANGE COMMISSION,

Plaintiff,

v.

STEVEN E. NOTHERN,

Defendant.

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Civil Action No. 05-10983 (NMG)

PLAINTIFF'S MOTION TO CONTINUE TRIAL DATE

Plaintiff Securities and Exchange Commission ("SEC") files this motion to request that the Court continue the November 3, 2008 trial date in this matter. Trial counsel for Plaintiff anticipates giving birth on or around September 1, 2008 and is seeking a continuance of the current November 3, 2008 trial date on the advice of her physician. As grounds for this motion, the SEC states as follows:

The Court's Prior Orders Extending Case Deadlines

1. On January 31, 2007 and June 22, 2007 the parties jointly moved for extensions of the current case deadlines for expert designations, expert depositions, service of dispositive motions, and responses to dispositive motions until such time as the Court could decide three related discovery actions filed by Nothern. *See Nothern v. United States Department of the Treasury*, No. 07-cv-10347-NMG (D. Mass.); *Nothern v. United States Department of the Treasury*, No. 07-cv-10661-NMG (D. Mass.); *Nothern v. United States Department of Homeland Security*, No. 07-cv-10865-NMG (D. Mass.).

2. The Court granted the parties' January 31, 2007 motion on March 13, 2007.

3. On April 6, 2007, the Court on its own motion scheduled trial in this case for October 15, 2007, with a pretrial conference set for October 4, 2007.

4. The Court granted the parties' June 22, 2007 motion on July 17, 2007 and scheduled the trial date for February 11, 2008, with a pretrial conference set for February 4, 2008.

5. On December 21, 2007, the parties jointly moved to continue the trial date and requested a revised scheduling order in light of the Court's October 4, 2007 Order in *Nothorn v. United States Department of the Treasury*, No. 07-cv-10347-NMG (D. Mass.), which allowed the defendant to take the depositions of five current and former witnesses from the Department of Treasury ("Treasury") in this action, and the Court's December 3, 2007 Order in *Nothorn v. United States Department of the Treasury*, No. 07-cv-10661-NMG (D. Mass.), which required Treasury to produce certain additional documents that the Court found should not have been withheld from production.

6. On January 11, 2008, the Court entered an Order granting in part, and denying in part, the parties' December 21, 2007 motion to continue the trial date to February 17, 2009, and scheduled trial in this action to begin on November 3, 2008, with a pretrial scheduled for October 9, 2008.

The Current Status of the Case

7. Pursuant to the Court's January 11, 2008 Order, the parties completed non-expert witness depositions in this action by February 29, 2008, exchanged expert reports on March 31, 2008, completed expert discovery on May 15, 2008 and completed their briefing on defendant's

motion for summary judgment on August 1, 2008.¹ Defendant has requested that the Court allow the parties to present oral argument on his motion for summary judgment.

8. Plaintiff's trial counsel, Sarah Levine, is scheduled to give birth on or about September 1, 2008. For medical reasons related to her delivery, Ms. Levine's physician has recommended that she seek a continuance of the trial date, currently scheduled for November 3, 2008. The SEC is prepared to provide the Court with a written statement from Ms. Levine's physician should the Court desire such a statement.

9. The SEC respectfully requests that the Court grant its motion to continue the trial date in this case until February 2, 2009, or another date thereafter that is convenient to the Court. If the SEC's request to continue the trial date is granted, the SEC also requests that the Court continue the pretrial conference currently scheduled for October 9, 2008 to a date that is convenient to the Court that is closer to the new trial date.

Respectfully submitted,

Dated: August 5, 2008

/s/ Erica Y. Williams

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¹ On August 1, 2008, Defendant filed an assented to motion for leave to file a reply brief in support of his motion for summary judgment.

CERTIFICATION PURSUANT TO LOCAL RULE 7.1(a)(2)

I, Erica Y. Williams, hereby certify that on August 4 and 5, 2008, counsel for defendant Steven E. Nothorn and I conferred and attempted in good faith to resolve the issues raised in this motion, but were unable to do so. Plaintiff's understanding is that for reasons other than those stated in the Plaintiff's Motion To Continue Trial Date, the defendant does not oppose rescheduling the trial to a date after November 3, 2008 if the trial may be completed by March 1, 2009.

/s/ Erica Y. Williams

CERTIFICATE OF SERVICE

I hereby certify that Plaintiff's Motion to Continue Trial Date filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF).

Dated: August 5, 2008

/s/ Erica Y. Williams